{deleted text} shows text that was in SB0133 but was deleted in SB0133S01.

Inserted text shows text that was not in SB0133 but was inserted into SB0133S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Senator Karen Mayne proposes the following substitute bill:

PROCUREMENT PROCESS AMENDMENTS

2017 GENERAL SESSION STATE OF UTAH

Chief Sponsor: Karen Mayne
House Sponsor:

LONG TITLE

General Description:

This bill modifies provisions relating to the procurement process.

Highlighted Provisions:

This bill:

- {adds to the criteria that can be considered in evaluating a bid or proposal whether the contractor and subcontractor:
 - employ an individual with OSHA training; and
 - will assign to the project an individual with oversight responsibility for safety at the} requires a request for proposals for a construction project to require offerors to include in a proposal the offeror's safety plan for the company and for the specific site; and
- requires the evaluation criteria of a request for proposals for a construction project

to include the existence and quality of an offeror's safety plan for the company and for the specific site.

Money Appropriated in this Bill:	
None	
Other Special Clauses:	
None	
Utah Code Sections Affected:	
AMENDS:	
{63G-6a-606} 63G-6a-703, as last amended by Laws of Utah 2016, Chapter 35	55
63G-6a-707 , as last amended by Laws of Utah 2016, Chapters 237 and 355	
Be it enacted by the Legislature of the state of Utah:	
Section 1. Section $\frac{\{63G-6a-606\}}{63G-6a-703}$ is amended to read:	
{ 63G-6a-606. Evaluation of bids Award Cancellation Rejecting a bids Award Cancellation Award Award Cancellation Award Aw	i d.
(1) A procurement unit that conducts a procurement using a bidding standard	
procurement process shall evaluate each bid using the objective criteria described in the	10
invitation for bids, which may include:	
(a) experience;	
(b) performance ratings;	
(c) inspection;	
(d) testing;	
(e) quality;	
(f) workmanship;	
(g) time and manner of delivery;	
(h) references;	
(i) financial stability;	
(j) cost;	
(k) suitability for a particular purpose;	
(l) the contractor's work site safety program, including any requirement that the	ı c
contractor imposes on subcontractors for a work site safety program; [or]	
(m) whether the contractor and each subcontractor:	

- (i) employs an individual who has received safety training sanctioned by the federal Occupational Safety and Health Administration; and (ii) will assign to the project a safety director or manager or other individual who will have oversight responsibility for safety at the site; or [(m)] (n) other objective criteria specified in the invitation for bids. (2) Criteria not described in the invitation for bids may not be used to evaluate a bid. (3) The conducting procurement unit shall: (a) award the contract as soon as practicable to: (i) the responsible bidder who submits the lowest responsive bid that meets the objective criteria described in the invitation for bids; or (ii) if, in accordance with Subsection (4), the procurement officer or the head of the conducting procurement unit rejects a bid described in Subsection (3)(a)(i), the responsible bidder who submits the next lowest responsive bid that meets the objective criteria described in the invitation for bids; or (b) cancel the invitation for bids without awarding a contract. (4) In accordance with Subsection (5), the procurement officer or the head of the conducting procurement unit may reject a bid for: (a) a violation of this chapter by the bidder who submitted the bid; (b) a violation of a requirement of the invitation for bids; (c) unlawful or unethical conduct by the bidder who submitted the bid; or (d) a change in a bidder's circumstance that, had the change been known at the time the bid was submitted, would have caused the bid to be rejected. (5) A procurement officer or head of a conducting procurement unit who rejects a bid under Subsection (4) shall: (a) make a written finding, stating the reasons for the rejection; and (b) provide a copy of the written finding to the bidder who submitted the rejected bid. (6) If a conducting procurement unit cancels an invitation for bids without awarding a contract, the conducting procurement unit shall make available for public inspection a written iustification for the cancellation.
- † 63G-6a-703. Request for proposals -- Requirements -- Publication of request.
 - (1) The request for proposals standard procurement process begins when the division

or a procurement unit with independent procurement authority issues a request for proposals.

- (2) A request for proposals shall:
- (a) state the period of time during which a proposal will be accepted;
- (b) describe the manner in which a proposal shall be submitted;
- (c) state the place where a proposal shall be submitted;
- (d) include, or incorporate by reference:
- (i) a description of the procurement items sought;
- (ii) a description of the subjective and objective criteria that will be used to evaluate the proposal; and
- (iii) the standard contractual terms and conditions required by the authorized purchasing entity;
- (e) if the request for proposals is for a construction project, require each offeror to include in a proposal a description of the offeror's company safety plan and the offeror's safety plan for the specific project that is the subject of the proposal;
- [(e)] (f) state the relative weight that will be given to each score for the criteria described in Subsection (2)(d)(ii), including cost;
- [(f)](g) state the formula that will be used to determine the score awarded for the cost of each proposal;
- [(g)] (h) if the request for proposals will be conducted in multiple stages, as described in Section 63G-6a-710, include a description of the stages and the criteria and scoring that will be used to screen offerors at each stage; and
- [(h)] (i) state that best and final offers may be allowed, as provided in Section 63G-6a-707.5, from responsible offerors who submit responsive proposals that meet minimum qualifications, evaluation criteria, or applicable score thresholds identified in the request for proposals.
- (3) The division or a procurement unit with independent procurement authority shall publish a request for proposals in accordance with the requirements of Section 63G-6a-112.
 - Section 2. Section **63G-6a-707** is amended to read:

63G-6a-707. Evaluation of proposals -- Evaluation committee.

(1) <u>(a)</u> To determine which proposal provides the best value to the procurement unit, the evaluation committee shall evaluate each <u>[responsive and responsible]</u> responsible offeror's

responsive proposal that has not been disqualified from consideration under the provisions of this chapter, using the criteria described in the request for proposals {, which may include:

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(a) experience;
       <del>(b)}</del>[, which].
        (b) The criteria in a request for proposals may include:
        [<del>(a)</del>] (i) experience;
        [(b)] (ii) performance ratings;
        [(c)] (iii) inspection;
        [(d)] (iv) testing;
        [(e)](v) quality;
        [<del>(f)</del>] (vi) workmanship;
        [<del>(g)</del>] (vii) time, manner, or schedule of delivery;
        [(h)] (viii) references;
        (ix) financial solvency;
        (i) (x) suitability for a particular purpose;
        \frac{(k)}{(xi)} management plans;
        (1) the presence and quality of a work site safety program, including any requirement
that the offeror imposes on subcontractors for a work site safety program; {
       (m) whether the contractor and each subcontractor:
       (i) employs an individual who has received safety training sanctioned by the federal
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- Occupational Safety and Health Administration; and
- (ii) will assign to the project a safety director or manager or other individual who will have oversight responsibility for safety at the site;}
 - $\left[\frac{m}{m}\right] \left(\frac{m}{m}\right)$ cost; or
- [(n)] (10) xiii) other subjective or objective criteria specified in the request for proposals.
- (c) The criteria in a request for proposals for a construction project shall include the existence and quality of:
 - (i) an offeror's company safety plan; and
 - (ii) the offeror's safety plan for the specific project that is the subject of the proposal.
 - (2) Criteria not described in the request for proposals may not be used to evaluate a

proposal.

- (3) (a) For a procurement of administrative law judge service, an evaluation committee shall consist of:
 - (i) the head of the conducting procurement unit, or the head's designee;
- (ii) the head of an executive branch procurement unit other than the conducting procurement unit, appointed by the executive director of the Department of Human Resource Management, or the head's designee; and
- (iii) the executive director of the Department of Human Resource Management, or the executive director's designee.
- (b) For every other procurement requiring an evaluation by an evaluation committee, the conducting procurement unit shall:
- (i) appoint an evaluation committee consisting of at least three individuals with at least a general familiarity with or basic understanding of:
- (A) the technical requirements relating to the type of procurement item that is the subject of the procurement; or
 - (B) the need that the procurement item is intended to address; and
- (ii) ensure that the evaluation committee and each individual participating in the evaluation committee process:
 - (A) does not have a conflict of interest with any of the offerors;
 - (B) can fairly evaluate each proposal;
- (C) does not contact or communicate with an offeror concerning the procurement outside the official evaluation committee process; and
- (D) conducts or participates in the evaluation in a manner that ensures a fair and competitive process and avoids the appearance of impropriety.
- (4) A conducting procurement unit may authorize an evaluation committee to receive assistance:
 - (a) from an expert or consultant who:
 - (i) is not a member of the evaluation committee; and
 - (ii) does not participate in the evaluation scoring; and
 - (b) to better understand a technical issue involved in the procurement.
 - (5) (a) An evaluation committee may, with the approval of the head of the conducting

procurement unit, enter into discussions or conduct interviews with, or attend presentations by, the offerors, for the purpose of clarifying information contained in proposals.

- (b) In a discussion, interview, or presentation under Subsection (5)(a), an offeror:
- (i) may only explain, illustrate, or interpret the contents of the offeror's original proposal; and
 - (ii) may not:
 - (A) address criteria or specifications not contained in the offeror's original proposal;
- (B) correct a deficiency, inaccuracy, or mistake in a proposal that is not an immaterial error;
- (C) correct an incomplete submission of documents that the solicitation required to be submitted with the proposal;
 - (D) correct a failure to submit a timely proposal;
 - (E) substitute or alter a required form or other document specified in the solicitation;
- (F) remedy a cause for an offeror being considered to be not responsible or a proposal not responsive; or
- (G) correct a defect or inadequacy resulting in a determination that an offeror does not meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds established in the solicitation.
- (6) (a) Except as provided in Subsection (7)(b) relating to access to management fee information, and except as provided in Subsection (9), each member of the evaluation committee is prohibited from knowing, or having access to, any information relating to the cost, or the scoring of the cost, of a proposal until after the evaluation committee submits its final recommended scores on all other criteria to the issuing procurement unit.
 - (b) The issuing procurement unit shall:
- (i) if applicable, assign an individual who is not a member of the evaluation committee to calculate scores for cost based on the applicable scoring formula, weighting, and other scoring procedures contained in the request for proposals;
- (ii) review the evaluation committee's scores and correct any errors, scoring inconsistencies, and reported noncompliance with this chapter;
- (iii) add the scores calculated for cost, if applicable, to the evaluation committee's final recommended scores on criteria other than cost to derive the total combined score for each

responsive and responsible proposal; and

- (iv) provide to the evaluation committee the total combined score calculated for each responsive and responsible proposal, including any applicable cost formula, weighting, and scoring procedures used to calculate the total combined scores.
 - (c) The evaluation committee may not:
- (i) change its final recommended scores described in Subsection (6)(a) after the evaluation committee has submitted those scores to the issuing procurement unit; or
 - (ii) change cost scores calculated by the issuing procurement unit.
- (7) (a) As used in this Subsection (7), "management fee" includes only the following fees of the construction manager/general contractor:
 - (i) preconstruction phase services;
 - (ii) monthly supervision fees for the construction phase; and
 - (iii) overhead and profit for the construction phase.
- (b) When selecting a construction manager/general contractor for a construction project, the evaluation committee:
- (i) may score a construction manager/general contractor based upon criteria contained in the solicitation, including qualifications, performance ratings, references, management plan, certifications, and other project specific criteria described in the solicitation;
- (ii) may, as described in the solicitation, weight and score the management fee as a fixed rate or as a fixed percentage of the estimated contract value;
- (iii) may, at any time after the opening of the responses to the request for proposals, have access to, and consider, the management fee proposed by the offerors; and
- (iv) except as provided in Subsection (9), may not know or have access to any other information relating to the cost of construction submitted by the offerors, until after the evaluation committee submits its final recommended scores on all other criteria to the issuing procurement unit.
 - (8) (a) The deliberations of an evaluation committee may be held in private.
- (b) If the evaluation committee is a public body, as defined in Section 52-4-103, the evaluation committee shall comply with Section 52-4-205 in closing a meeting for its deliberations.
 - (9) An issuing procurement unit is not required to comply with Subsection (6) or

(7)(b)(iv), as applicable, if the head of the issuing procurement unit or a person designated by rule made by the applicable rulemaking authority:

- (a) signs a written statement:
- (i) indicating that, due to the nature of the proposal or other circumstances, it is in the best interest of the procurement unit to waive compliance with Subsection (6) or (7)(b)(iv), as the case may be; and
- (ii) describing the nature of the proposal and the other circumstances relied upon to waive compliance with Subsection (6) or (7)(b)(iv); and
 - (b) makes the written statement available to the public, upon request.

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Legislative Review Note

Office of Legislative Research and General Counsel}